Tai Choi Yu v Syarikat Tingan Lumber Sdn Bhd

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO Q-02-237 OF 1997
SHAIK DAUD, SITI NORMA YAAKOB AND DENIS ONG JJCA
3 SEPTEMBER 1998

Civil Procedure *— Parties — Intervention — Whether minority shareholder could intervene in action against company — Whether application to intervene could be made after final judgment had been entered — Rules of the High Court 1980 O 15 r 6(2)*

The issue in this case was whether the applicant, a minority shareholder in a company ('the defendant'), could intervene in an action filed by a plaintiff where default judgment has already been entered against the defendant. The Board of Directors of the defendant had earlier by a majority resolved that no action be taken by the company to set aside the default judgment or to oppose the winding up proceedings filed against the defendant.

Held, dismissing the appeal with costs:

(1) Although O 15 r 6(2) of the Rules of the High Court 1980 states that an application to intervene could be made 'at any stage of the proceedings', this does not mean that such application can be made after final judgment had been entered. In the present case, the applicant took out the application after judgment had been perfected (see pp 277I and 278A–C); *Shell Malaysia Trading Sdn Bhd v Leong Yuet Yeng & Ors* [1990] 3 MLJ 254 followed.

(2) Before the court can grant leave to intervene, the applicant must show that he has an interest directly related to the subject matter of the action. A mere shareholder, a fortiori, a minority shareholder has no such interest, legal or equitable, in the property of a company (see p 278D–E, H); *Macaura v Northern Assurance Co Ltd & Ors* [1925] AC 619 followed.

[**Bahasa Malaysia summary**

Isu dalam kes ini adalah sama ada pemohon, seorang pemegang saham minoriti dalam sebuah syarikat ('defendan'), boleh mencelah dalam tindakan yang difailkan oleh plaintif di mana penghakiman ingkar telah pun dimasukkan terhadap defendan. Lembaga Pengarah defendan terlebih dahulu menerusi majoriti telah memutuskan bahawa tiada tindakan akan diambil oleh syarikat tersebut untuk mengetepikan penghakiman ingkar atau untuk menentang prosiding penggulungan yang difailkan terhadap defendan.

Diputuskan, menolak rayuan dengan kos:

(1) Walaupun A 15 k 6(2) Kaedah-Kaedah Mahkamah Tinggi 1980 menyatakan bahawa suatu permohonan untuk mencelah boleh

dibuat 'at any stage of the proceedings', ini tidak bermakna bahawa permohonan sedemikian boleh dibuat selepas penghakiman muktamad telah dimasukkan. Dalam kes ini, pemohon mengambil permohonan selepas penghakiman telah disempurnakan (lihat ms 277I dan 278A–C); *Shell Malaysia Trading Sdn Bhd v Leong Yuet Yeng & Ors* [1990] 3 MLJ 254 diikut.

(2) Sebelum mahkamah memberikan kebenaran untuk mencelah, pemohon mestilah menunjukkan bahawa ia mempunyai kepentingan yang berkaitan secara langsung dengan isi perkara tindakan. Pemegang saham semata-mata, a fortiori, pemegang saham minoriti tidak mempunyai kepentingan begitu, di sisi undang-undang atau ekuiti, dalam harta sebuah syarikat (lihat ms 278D–E, H); *Macaura v Northern Assurance Co Ltd & Ors* [1925] AC 619 diikut.]

Notes

For cases on intervention, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 3278–3295.

Cases referred to

Eh Riyid v Eh Tek [1976] 1 MLJ 262 (refd)
Lee Meow Lim v Lee Meow Nyin (t/a Cheong Fatt Merchant), Nabisco Brands (M) Sdn Bhd, Intervener [1990] 3 MLJ 123 (refd)
Macaura v Northern Assurance Co Ltd & Ors [1925] AC 619 (folld)
Ratnam v Cumarasamy & Allor [1965] 1 MLJ 228 (refd)
Sanders Lead Co Inc v Entores Metal Brokers Ltd [1984] 1 WLR 452 (refd)
Shell Malaysia Trading Sdn Bhd v Leong Yuet Yeng & Ors [1990] 3 MLJ 254 (folld)
Tohtonku Sdn Bhd v Superace (M) Sdn Bhd [1989] 2 MLJ 298 (refd)
United Asian Bank Bhd v Personal Representative of Roshammah (decd) & Ors [1994] 3 MLJ 327 (refd)
Vasudevan v T Damodaran & Anor [1981] 2 MLJ 150 (refd)
Wee Tiang Kheng & Ors v Ngu Nii Soon & Ors [1989] 1 MLJ 252 (refd)

Legislation referred to

Companies Act 1965 s 218(1)(a)
Rules of the High Court 1980 O 15 rr 6(2), (3)

Appeal from: Suit No 22–03 of 1995 (High Court, Miri)

Tai Choi Yu (*Tai Choi Yu & Co*) in person.
RR Sethu (*Dominic Lai* with him) (*Dominic Lai & Co*) for the respondent.

Shaik Daud JCA (delivering judgment of the court): This is an appeal from the decision of the Miri High Court which had, on 4 November 1997, dismissed the appellant's summons-in-chambers to intervene in a suit filed by the respondent company Syarikat Tingan Lumber Sdn Bhd ('STL') against a company known as New Tingan Timber Sdn Bhd ('NTT').

The respondent had filed a suit and a statement of claim dated 28 June 1995, against NTT claiming a sum of RM721,197.60 due from NTT to STL on an account stated and contained in a confirmation request dated 23 March 1994. The amount claimed was the balance of the price of logs sold and delivered by STL to NTT and for moneys paid to NTT's creditors at the request of NTT.

When the matter came up in the Miri High Court on 3 February 1996, judgment in default of appearance was entered against NTT which was founded on the failure of NTT to appear and on the admission of the debt by NTT. Subsequently STL issued a statutory notice under s 218(1)(a) of the Companies Act 1965, to wind up NTT as they could not pay their debts.

The appellant herein, a minority shareholder and a director of NTT, had, on 13 March 1996 received a copy of the statutory notice. He then called for a meeting of the Board of Directors of NTT which took place on 23 March 1996. The Board by a majority resolved that no action be taken by the company to set aside the default judgment or to oppose the winding up proceedings, on the ground that there is no defence to the action and that NTT was insolvent. Having lost at the Board meeting by the majority decision, the appellant turned to the court by filing the application for leave to intervene under O 15 rr 6(2) and (3) of the Rules of the High Court 1980 ('the RHC').

The issue before the learned judicial commissioner was whether the appellant was entitled to intervene. First and foremost, the decision appealed against was made in the exercise of the discretion of the court which discretion is rarely interfered with on appeal, based on the principle that the court had exercised its discretion judicially. In *Ratnam v Cumarasamy & Allor* [1965] 1 MLJ 228, the Privy Council held that it will not interfere with the discretion exercised by a lower court unless it is clearly satisfied that the discretion had been exercised on a wrong principle. Similarly, the Federal Court in *Vasudevan v T Damodaran & Anor* [1981] 2 MLJ 150, held that an exercise of discretion ought not to be interfered with unless there is satisfactory evidence that the judge was wrong because of the presumption that the judge has rightly exercised his discretion.

Next is, when should such an application be made. Although O 15 r 6(2) states that such an application could be made 'at any stage of the proceedings', this does not mean that such an application can be made after final judgment had been entered. In *Shell Malaysia Trading Sdn Bhd v Leong Yuet Yeng & Ors* [1990] 3 MLJ 254, the court held that O 15 r 6

only applies to proceedings where the substitution of any of the parties to the cause or matter is made before final judgment. In that case, the application was made after a default judgment had been finalised. See also *United Asian Bank Bhd v Personal Representative of Roshammah (decd) & Ors* [1994] 3 MLJ 327. A default judgment once perfected is a final judgment. See the case of *Wee Tiang Kheng & Ors v Ngu Nii Soon & Ors* [1989] 1 MLJ 252, which held that a default judgment which had been perfected is a final judgment and the court there refused to exercise its discretion under O 15 r 6(2) of the RHC to remove the first plaintiff on the ground that he had no cause of action against the second and third defendants in the writ against whom judgment in default of defence had been entered and perfected.

In the present case, STL obtained the default judgment on 3 February 1996. The appellant took out the summons-in-chambers on 15 November 1996, by which time the judgment had been perfected and this is not denied by the appellant.

It is settled law that before the court can grant leave to intervene, the applicant must show that he has an interest directly related to the subject matter of the action. Interest here means a legal interest not a mere commercial interest. Therefore, a mere commercial interest in the outcome of the action is not sufficient. In *Sanders Lead Co Inc v Entores Metal Brokers Ltd* [1984] 1 WLR 452, Kerr LJ in the Court of Appeal held at p 460 as follows:

> In my view, the rule requires some interest in the would-be intervener which is in some way directly related to the subject matter of the action. A mere commercial interest in its outcome, divorced from the subject matter of the action, is not enough.

This principle was applied in a number of Malaysian cases namely; *Tohtonku Sdn Bhd v Superace (M) Sdn Bhd* [1989] 2 MLJ 298 and *Lee Meow Lim v Lee Meow Nyin (t/a Cheong Fatt Merchant), Nabisco Brands (M) Sdn Bhd, Intervener* [1990] 3 MLJ 123 and the Federal Court case of *Eh Riyid v Eh Tek* [1976] 1 MLJ 262.

Under these circumstances, has the appellant shown that he has a legal interest to interfere in the proceedings? Here, the NTT themselves had admitted the debt and at a Board meeting called for by the appellant himself, it was resolved by a majority that the company admit the debt and take no further step to either defend the action or oppose the winding up proceedings as they were insolvent. The appellant in his affidavit avers that he was merely a minority shareholder of NTT. The law is clear that a mere shareholder, a fortiori, a minority shareholder has no interest, legal or equitable, in the property of a company (see *Macaura v Northern Assurance Co Ltd & Ors* [1925] AC 619 at p 626).

For the aforesaid reasons, we are satisfied that the High Court was right in not exercising its discretion to grant leave to the appellant to intervene. The appellant's problems are with the Board of Directors of NTT and, since these are internal matters of NTT, they are best dealt with

by NTT and not by the court. We see no reason to interfere and we dismissed the appeal with costs and ordered the deposit to be paid to respondent to account of their taxed costs.

Appeal dismissed with costs.

Reported by Loo Lai Mee